

KUPILLAS, UNGER & BENJAMIN, LLP

1 Linden Place, Suite 410-A
Great Neck, NY 11021
(516) 213-4493
(718) 425-0692 (Fax)
E-mail: jbenjamin@nyfraudlaw.com

December 13, 2017

Via ECF

U.S. District Court
Western District of New York
2 Niagara Square
Buffalo, New York 14202

Attn: Hon. Michael J. Roemer

Re: ***Horn v. Medical Marijuana, Inc., et al.***
Case No: 15-CV-701 (FPG-MJR)

Dear Judge Roemer:

I write in reply to defense counsel Eric Boron, Esq.'s December 11, 2017 letter response to my request for an extension of time to take the deposition of the defendant's CPA expert only, to a date they can produce him.

Oral argument for this matter is scheduled for Monday, December 18, 2017 at 11:00 a.m. As such, I also hereby respectfully request (perhaps also on behalf of the Messner Reeves firm in Manhattan, representing the Dixie defendants) that the Court accept our appearance by phone.

As expected and without incident, I started and completed the defendants' liability expert yesterday. It took the full day.

Attached hereto as Exhibit "1" is a copy of my October 19, 2017 e-mail to all counsel with the availability of expert witnesses for depositions.

Attached hereto as Exhibit "2" is a copy of my November 7, asking defendants again for the availability of their experts to proceed with depositions.

Attached hereto as Exhibit "3" is a copy of defense counsel Eric Boron, Esq.'s email of November 15, 2017 offering a schedule for all expert depositions.

From October 19 to November 15, 2017, I heard nothing from defendants as to a firm schedule as to either plaintiffs' or defendants' expert depositions. Due solely to the defendants' inability to proceed in November, we lost that entire month to at least start expert depositions despite my email of 10/19 and initial offer to start on November 1. (Exhibit "1").

Defendants have first taken the position that my request is belated. That is inaccurate since the deadline for expert depositions is December 29, 2017.

Second, and though my request to reschedule Mr. Amodio's deposition came *one week prior* on December 4, 2017 and immediately after plaintiff's economist's deposition, defendants were not able to go forward on my offered entire week of December 18, and moreover to conduct it in Buffalo if necessary, to maintain compliance with the Case Management Order. Defendants scheduling of their CPA's deposition gave essentially a 10-day window (12/12 to 12/22 given the holidays), again after having lost the entire month of November as mentioned above.

As such, I was thrust into an untenable schedule which prompted my letter Mr. Boron attached to his response.

In summary, this dispute may have been avoided if we had started in November as I stated in my October 19, 2017 email. We are simply asking for a date that plaintiff's can produce their final expert.

Last, I would respectfully request oral argument on December 18, 2017 be held by phone.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "Jeffrey Benjamin". The script is cursive and fluid.

Jeffrey Benjamin, Esq.

JB

cc: All parties via ECF